



CWP-22893-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-22893-2024

Date of Decision: 10.09.2024

Jugbir

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Abhijeet Singh Rawaley, Advocate for the petitioner

Ms. Shruti Jain Goyal, Senior DAG, Haryana with
Ms. Tanushree Gupta, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the order dated 01.12.2023, Annexure P-12, whereby the petitioner was relieved from service as Clerk in Government Industrial Training Institute, Surewala, Hisar/fourth respondent.

2. Facts of the case in brief are, the Haryana Saff Selection Commission/second respondent issued advertisement 05/2019 inviting applications for recruitment to the post of Clerks. Written examination was conducted on 21.09.2019, and its result was declared on 18.12.2019. The petitioner cleared the same with sixty-four marks and was given five marks for 'no job in family' criteria, making it sixty-nine out of hundred in total. On that basis, he was recommended and appointed as Clerk in the respondent Skill Development and Industrial Training Department vide letter dated 10.09.2020, Annexure P-3.



2.1 Later, this Court vide order dated 25.04.2022, passed in CWP-15672-2021 titled *Amit Kumar and others v. State of Haryana and others*, set aside the answer key of written examination as well as the final result of selection. A direction was issued that after re-evaluation of the answer sheets, scrutiny of documents be carried out all over again. After declaration of fresh result in this manner, appointments will be offered. Accordingly, revised result of written examination was declared by the Commission vide announcement dated 17.05.2022. The petitioner could not find place in the merit list having secured lesser marks than those of the last selected candidate in his category; he secured sixty-four marks as a general category candidate, whereas cut-off marks for the category were sixty-nine, and for the waitlisted candidates, sixty-eight. Consequently, vide notice dated 13.05.2022, Annexure P-6, the selected/short listed candidates were called for scrutiny of documents. And the impugned show cause notice dated 24.06.2022, Annexure P-9, was issued asking him to explain why should he not be relieved from service as his selection and appointment was based on the previous final result, which stood quashed by the High Court in *Amit Kumar* case (*supra*).

2.2. Since proper procedure for relieving certain candidates, who had been selected pursuant to the earlier result, was not followed, some of them approached this Court by filing CWP 14017 of 2022 titled *Rajpal v. Haryana Staff Selection Commission*, and other connected writ petitions, wherein it was ordered that “...*status quo ante qua services of the petitioners, one day prior to the passing of respective relieving order, shall be maintained, with liberty to the competent authority, to pass a speaking order after duly considering the reply filed by the petitioners and in case, any adverse order is passed, the same shall not be implemented till the next date of hearing.*” In deference to the



directions issued, the Department decided not to relieve the appointees till proper procedure/show cause notice was issued to each one of them. Accordingly, the petitioner also continued in service, though he had not filed any petition before the Court.

2.3. Many of the earlier selected candidates had challenged their relieving from service after the revised result by filing various writ petitions, and the entire batch of fifty-four petitions was decided by this Court vide judgment, dated 07.10.2023, rendered in CWP-14063-2022 titled *Rahul Boora v. State of Haryana and others*. The petitions were dismissed. Letters Patent appeals filed against this judgment are pending adjudication before the Division Bench.

2.4. In these circumstances, after considering all the relevant facts and circumstances of the case as well as the law laid down by this Court in *Amit Kumar* and *Rahul Boora* cases, the impugned order relieving the petitioner from service was passed.

3. In this factual background, learned counsel for the petitioner has contended that the petitioner has been relieved from service only because he has not approached the Court earlier against the show cause notice, and was not one of the petitioners in *Rahul Boora* case. The judgment rendered by this Court in *Rahul Boora* case is under challenge before the Division Bench where *status quo* regarding services of the petitioners therein has also been ordered to be maintained. On the similar grounds and taking a sympathetic view, the petitioner should also be allowed to continue in service. The respondents have allowed the petitioner to continue in service so far irrespective of his not approaching the Court earlier, there is no reason for relieving him now when other similarly placed employees are continuing in service. The petitioner was



never informed about the pendency of *Amit Kumar* case, and he could not approach the Court earlier; therefore, he cannot be faulted on this account. He has further contended that in terms of law laid down by this Court vide judgment, dated 31.05.2024, in CWP-1563-2024 titled *Sukriti Malik v. State of Haryana and others*, the respondents are not entitled to determine merit of the candidates by including marks under the socio-economic criteria, as the same has been set aside. Accordingly, the petitioner's merit is to be determined out of ninety marks instead of hundred, by excluding ten marks under socio-economic/ 'no job in family' criteria.

4. Learned State counsel, on the contrary, contends that after revision of the selection result, the petitioner is not one of the selected candidates and has no right to be appointed. Therefore, he has rightly been relieved vide the impugned order. Similar cases of other employees already stand dismissed by this Court vide a detailed judgment in *Rahul Boora* case. Although appeals against the same are pending before the Division Bench and initially *status quo* regarding services of employees was granted, it has not been granted in subsequent appeals. The interim order passed by the Division Bench on 15.05.2024, in LPA No.1517 of 2023 titled *Manish Kumar and another v. State of Haryana and others*, and the connected batch of cases, reads as under:

11. It is not disputed that the said set of appellants are working on supernumerary posts continuously as such and therefore, we make it clear that any such observations herein which are made solely for the protection of the present appellants will not give any vested right to the others who have chosen not to approach this Court and get interim orders from July-2022 onwards since we are informed that there is another set of 600



persons who might have been adversely effected but have chosen not to challenge those orders.

Therefore, the petitioner cannot take benefit of the pending LPAs either. She further contends that the judgment in *Sukriti Malik* case is not applicable to the instant case.

5. Submissions made by learned counsel for the parties have been considered.

6. There is no denying the fact that the petitioner herein is similarly placed as the petitioners in *Rahul Boora* case, wherein a co-ordinate Bench after examining the entire gamut of controversy and considering the relevant law on the issue, came to the conclusion that they could not be allowed to continue in service without having been selected as per the revised result. The observations are as under:

81. Learned Senior counsel appearing for the petitioners has not been able to rebut the said settled principle of law as per which even if the petitioner has not misrepresented in any manner however, since the appointment can only be made against the advertised posts, the prayer of the petitioners in case accepted, will be violative of the settled principle of law. The judgments being cited by the learned Senior counsel are by taking into account the fact that posts are available but in the present case, learned counsel for the respondents has submitted that after accommodating the candidates, who were to be appointed in place of the petitioners, there remain no vacant post and rather supernumerary posts have been created to give salary to the petitioners who are still continuing under the interim order of this Court. Keeping in view



the fact said fact as there are no posts available, petitioners cannot be accommodated.

82. Prayer of the petitioners that they cannot be ousted from the service now after revised merit list despite the fact that they are not within the selection zone keeping in view the number of posts advertised cannot be accepted. In case the said prayer of the petitioners is accepted not only the posts more than the advertised will be filled up but the said direction is capable of being misused so as to make selection contrary to the provisions and thereafter give a right to the ineligible selected candidates to continue in service, which is not permissible under law. No candidate can be allowed benefit of appointment contrary to the provisions of the advertisement/rules governing the service and the eligibility provided to compete for the selection. Hence, prayer of the petitioners that they be allowed to continue in service despite beyond the zone of selection process cannot be accepted.

This Court is in respectful agreement with the view taken by the co-ordinate Bench in *Rahul Boora* case. Mere filing of appeals against the judgment and/or interim permission to allow some of the appellants to continue in service, is not a sufficient ground for this Court to entertain the petition once the issue already stands settled against the petitioner. Further, the argument of learned counsel for the petitioner that based upon *Sukriti Malik* case, wherein this Court has set aside the socio-economic criteria altogether, the respondents are required to determine the petitioner's merit by excluding marks under the criteria, is without substance. The judgment has been rendered on 31.05.2024, and will be

applicable prospectively only. It has no bearing on the selection in question that already stands concluded with final declaration of revised result on 23.06.2022.

7. In view thereof, there is no ground to entertain the petition, and it stands dismissed *in limine*.

10.09.2024

Payal

(TRIBHUVAN DAHIYA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>